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in §1266.3(b). Wherever the term “member” appears in §1266.3(b), the term shall be construed also to mean “housing associate.”

(ii) A Bank shall apply the pricing criteria identified in §1266.5(b)(2) equally to all of its member and housing associate borrowers.

(3) *Limit on advances.* The principal amount of any advance made to a housing associate may not exceed 90 percent of the unpaid principal of the mortgage loans or securities pledged as security for the advance. This limit does not apply to an advance made to a housing associate under paragraph (b)(2) of this section.

(d) *Transaction accounts.* Solely for the purpose of facilitating the making of advances to a housing associate, a Bank may establish a transaction account for each housing associate.

(e) *Loss of eligibility—(1) Notification of status changes.* A Bank shall require a housing associate that applies for an advance to agree in writing that it will promptly inform the Bank of any change in its status as a housing associate.

(2) *Verification of eligibility.* A Bank may, from time to time, require a housing associate to provide evidence that it continues to satisfy all of the eligibility requirements of the Bank Act, this subpart and part 1264 of this chapter.

(3) *Loss of eligibility.* A Bank shall not extend a new advance or renew an existing advance to a housing associate that no longer meets the eligibility requirements of the Bank Act, this subpart and part 1264 of this chapter until the entity has provided evidence satisfactory to the Bank that it is in compliance with such requirements.

[58 FR 29469, May 20, 1993, as amended by 65 FR 203, Jan. 4, 2000; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44430, July 18, 2000; 67 FR 12851, Mar. 20, 2002; 70 FR 9510, Feb. 28, 2005]

### Subpart C—Advances to Out-of-District Members and Housing Associates

#### § 1266.25 Advances to out-of-district members and housing associates.

(a) *Establishment of creditor/debtor relationship.* Any Bank may become a

creditor to a member or housing associate of another Bank through the purchase of an outstanding advance, or a participation interest therein, from the other Bank, or through an arrangement with the other Bank that provides for the establishment of such a creditor/debtor relationship at the time an advance is made.

(b) *Applicability of advances requirements.* Any creditor/debtor relationship established pursuant to paragraph (a) of this section shall be subject to all of the provisions of this part that would apply to an advance made by a Bank to its own members or housing associates.

[65 FR 43981, July 17, 2000; 65 FR 46049, July 26, 2000, as amended at 67 FR 12852, Mar. 20, 2002]

## PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS

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AUTHORITY: 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

SOURCE: 76 FR 29151, May 20, 2011, unless otherwise noted.

### § 1267.1 Definitions.

As used in this part:

*Asset-backed security* means a debt instrument backed by loans, but does not include debt instruments that meet the definition of a mortgage-backed security.

*Bank*, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*Consolidated obligation* means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and in accordance with any implementing

regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

*Deposits in banks or trust companies* means:

- (1) A deposit in another Bank;
- (2) A demand account in a Federal Reserve Bank;
- (3) A deposit in or sale of Federal funds to:
  - (i) An insured depository institution, as defined in section 2(9) of the Bank Act, that is designated by the Bank's board of directors;
  - (ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation and is designated by the Bank's board of directors; or
  - (iii) A U.S. branch or agency of a foreign Bank as defined in the International Banking Act of 1978, as amended, (12 U.S.C. 3101 *et seq.*) that is subject to supervision of the Board of Governors of the Federal Reserve System and is designated by the Bank's board of directors.

*Derivative contract* means generally a financial contract the value of which is derived from the values of one or more referenced assets, rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate derivative contracts, foreign exchange rate derivative contracts, equity derivative contracts, precious metals derivative contracts, commodity derivative contracts and credit derivatives, and any other instruments that pose similar risks.

*GAAP* means the United States generally accepted accounting principles.

*Indexed principal swap* means an interest rate swap agreement in which the notional principal balance amortizes based upon the prepayment experience of a specified group of mortgage-backed securities or asset-backed securities or the behavior of an interest rate index.

*Interest-only stripped security* means a class of mortgage-backed or asset-backed security that is allocated only the interest payments made on the underlying mortgages or loans and receives no principal payments.

*Investment grade* means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest credit rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or similar standards.

*Mortgage-backed security* means a security or instrument, including collateralized mortgage obligations (CMOs), and Real Estate Mortgage Investment Trusts (REMICS), that represents an interest in, or is secured by, one or more pools of mortgage loans.

*NRSRO* means a credit rating organization registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization.

*Principal-only stripped security* means a class of mortgage-backed or asset-backed security that is allocated only the principal payments made on the underlying mortgages or loans and receives no interest payments.

*Total capital* shall have the meaning set forth in § 1229.1 of this chapter.

#### § 1267.2 Authorized investments and transactions.

(a) In addition to assets enumerated in parts 1266 and 955 of this title and subject to the applicable limitations set forth in this part, and in part 1272 of this chapter, each Bank may invest in:

- (1) Obligations of the United States;
- (2) Deposits in banks or trust companies;
- (3) Obligations, participations or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;
- (4) Mortgages, obligations, or other securities that are, or ever have been, sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 or 1455);
- (5) Stock, obligations, or other securities of any small business investment company formed pursuant to 15 U.S.C.

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681, to the extent such investment is made for purposes of aiding members of the Bank; and

(6) Instruments that the Bank has determined are permissible investments for fiduciary or trust funds under the laws of the state in which the Bank is located.

(b) Subject to any applicable limitations set forth in this part and in part 1272 of this chapter, a Bank also may enter into the following types of transactions:

- (1) Derivative contracts;
- (2) Standby letters of credit, pursuant to the requirements of part 1269 of this title;
- (3) Forward asset purchases and sales;
- (4) Commitments to make advances; and
- (5) Commitments to make or purchase other loans.

### § 1267.3 Prohibited investments and prudential rules.

(a) *Prohibited investments.* A Bank may not invest in:

- (1) Instruments that provide an ownership interest in an entity, except for investments described in § 1265.3(e) and (f) of this chapter;
- (2) Instruments issued by non-United States entities, except United States branches and agency offices of foreign commercial banks;
- (3) Debt instruments that are not rated as investment grade, except:
  - (i) Investments described in § 1265.3(e) of this chapter; and
  - (ii) Debt instruments that were downgraded to a below investment grade rating after acquisition by the Bank;
- (4) Whole mortgages or other whole loans, or interests in mortgages or loans, except:
  - (i) Acquired member assets;
  - (ii) Investments described in § 1265.3(e) of this title;
  - (iii) Marketable direct obligations of state, local, or Tribal government units or agencies, having at least the second highest credit rating from an NRSRO, where the purchase of such obligations by the Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required

to generate needed funding for housing or community lending;

(iv) Mortgage-backed securities, or asset-backed securities collateralized by manufactured housing loans or home equity loans, that meet the definition of the term “securities” under 15 U.S.C. 77b(a)(1) and are not otherwise prohibited under paragraphs (a)(5) through (a)(7) of this section, and

(v) Loans held or acquired pursuant to section 12(b) of the Bank Act (12 U.S.C. 1432(b)).

(5) Residual interest and interest accrual classes of securities;

(6) Interest-only and principal-only stripped securities; and

(7) Fixed rate mortgage-backed securities or eligible asset-backed securities or floating rate mortgage-backed securities or eligible asset-backed securities that on the trade date are at rates equal to their contractual cap, with average lives that vary more than six years under an assumed instantaneous interest rate change of 300 basis points, unless the instrument qualifies as an acquired member asset under part 955 of this title.

(b) *Foreign currency or commodity positions prohibited.* A Bank may not take a position in any commodity or foreign currency. The Banks may issue consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, provided that the Banks meet the requirements of § 1270.9(d) of this chapter, and all other applicable requirements related to issuing consolidated obligations.

(c) *Limits on certain investments.*—(1) A purchase, otherwise authorized under this part, of mortgage-backed securities or asset-backed securities, may not cause the aggregate value of all such securities held by the Bank to exceed 300 percent of the Bank’s total capital. For purposes of this limitation, such aggregate value will be measured as of the transaction trade date for such purchase, and total capital will be the most recent amount reported by a Bank to FHFA. A Bank will not be required to divest securities solely to bring the level of its holdings into compliance with the limits of this paragraph, provided that the original

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purchase of the securities complied with the limits in this paragraph.

(2) A Bank's purchase of any mortgage-backed or asset-backed security may not cause the value of its total holdings of mortgage-backed and asset-backed securities, measured as of the transaction trade date for such purchase, to increase in any calendar quarter by more than 50 percent of its total capital as of the beginning of such quarter.

(3) For purposes of applying the limits under this paragraph (c), the value of relevant mortgage-backed or asset-backed securities shall be calculated based on amortized historical costs for securities classified as held-to-maturity or available-for-sale and on fair value for trading securities.

### § 1267.4 Limitations and prudential requirements on use of derivative instruments.

(a) *Non-speculative use.* Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

(b) *Additional Prohibitions.*—(1) A Bank may not enter into interest rate swaps that amortize according to behavior of instruments described in § 1267.3(a)(5) or (6) of this part.

(2) A Bank may not enter into indexed principal swaps that have average lives that vary by more than six years under an assumed instantaneous change in interest rates of 300 basis points, unless they are entered into in conjunction with the issuance of consolidated obligations or the purchase of permissible investments or entry into a permissible transaction in which all interest rate risk is passed through to the investor or counterparty.

(c) *Documentation requirements.*—(1) Derivative transactions with a single counterparty shall be governed by a single master agreement when practicable.

(2) A Bank's agreement with the counterparty for over-the-counter derivative contracts shall include:

(i) A requirement that market value determinations and subsequent adjustments of collateral be made at least on a monthly basis;

(ii) A statement that failure of a counterparty to meet a collateral call will result in an early termination event;

(iii) A description of early termination pricing and methodology, with the methodology reflecting a reasonable estimate of the market value of the over-the-counter derivative contract at termination (standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology may be used to satisfy this requirement); and

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

### § 1267.5 Risk-based capital requirements for investments.

Any Bank which is not subject to the capital requirements set forth in part 932 of this title shall hold retained earnings plus general allowance for losses as support for the credit risk of all investments that are not rated by an NRSRO, or are rated or have a putative rating below the second highest credit rating, in an amount equal to or greater than the outstanding balance of the investments multiplied by:

(a) A factor associated with the credit rating of the investments as determined by FHFA on a case-by-case basis for rated assets to be sufficient to raise the credit quality of the asset to the second highest credit rating category; and

(b) 0.08 for assets having neither a putative nor actual rating.

## PART 1269—STANDBY LETTERS OF CREDIT

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1269.3 Standby letters of credit on behalf of housing associates.

1269.4 Obligation to Bank under all standby letters of credit.

1269.5 Additional provisions applying to all standby letters of credit.

AUTHORITY: 12 U.S.C. 1429, 1430, 1430b, 1431, 4511, 4513 and 4526.

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